

**TOWN OF KITTERY
PLANNING BOARD MEETING**

Tuesday, February 8, 2005

APPROVED
Conference Room

Meeting called to order at: 6:10 p.m.

Present: Doug Muir, Ron Ledgett, Chairman Russell White, Janet Gagner, Scott Mangiafico, Megan Kline, Jerry Solich

1. ROLL CALL

Roll call noted.

2. DISCUSSION

Mr. Ledgett is concerned that we make use of the same language throughout because we have to make sure that the changes are made throughout. There are some requirements in the guidelines that are not in the design handbook. Mr. Ledgett doesn't like the redundancy.

Revised Draft Lighting Amendments to the Ordinances, dated January 26, 2005

- On page 3, e, it says "reasonable compliance." That is vague. Mr. Ledgett wants to specify in whose judgment it is reasonable - that of the Planning Board? In addition, if it is not before the Planning Board, then the CEO should be the one to make the decision that the Planning Board would otherwise make. *Question for Eyerman: Do Planning Board references cover the eventuality of the CEO applying this?*

Ms. Kline asks whether we should create a check list, since we are creating the ordinance. Mr. Solich says the best people to develop the check list are the CEO's. 16-32-020 allows the CEO to employ a consultant to ensure compliance with the code. Mr. Ledgett thinks that the CEO should be involved in this. Ms. Gagner suggests getting comments from the CEO at the public hearing.

Ms. Gagner and Mr. Solich did go through and look at the shalls, musts, and mayas.

- *Page 5, there is an editorial error - delete "from the portions of the walls" to the end (said twice).*
- *3.i. on page 5 has a beginning quote and we should have end quote at the end of number 6 on page 6.*

Ms. Kline wants to know if a limit of 39,000 lumen is actually a good limit. A 65 watt bulb is 800 lumen. Chairman White would like an example of a 39,000 lumen light. Mr. Ledgett thinks

that this is not as much light as it sounds like, that there is a logarithmic calculation. Ms. Kline says to look at page 3 also - 8,500 lumen if the lamp is internally recessed. Ms. Gagner thinks it has to go down some. There was a quote on general lighting principles on page 2 of the design handbook which said that the lumen will not exceed 2,000 with period ornamental fixtures. Mr. Ledgett says the latest revision has taken it out and referred back to the ordinance. Section 16-3.1210(g). Ms. Kline says we need to make sure that b and g are what we want them to be.

- *We need an example of a 39,000 lumen light and an 8,500 lumen light*
- *Chairman White wants to add on page 1 at the bottom these standards are intended to “illustrate”.*

Guidelines

Under lighting goals, Ms. Gagner thinks that we should add “promote wise energy use”. Mr. Solich thinks that it should be second under safety.

- *Mr. Ledgett would like to go through the new version and make sure that they did cross-reference it correctly. Go through it for general comments tonight and wait for Thursday.*

There is some discussion about using the light fixtures at York Hospital as an example.

Mixed Use, January 27, 2005, revision

Ms. Kline says that Town Council wants the current language to be very clear and well-defined. Ms. Kline feels that if Town Council wants terms matched up with their definitions, then either there will be a format to do it and the Planner Noel can do it, or if we need definitions, then maybe we could get them from other offices. Chairman White says that first we need a list of “orphans.”

- *Chairman White thinks theater could be defined - live theater or movie theater.*
- *Shop in pursuit of trades needs to be defined. The Kennebunk definition of a Tradesman Shop: An establishment occupied by a craftsperson or a person in a skilled trade, including, by way of example only, plumbing, carpentry, or electrical work. The term also shall include establishments engaged in the repair of electrical goods and appliances, watches, jewelry, equipment, furniture, or other goods, exclusive of motor vehicles, where such services are the primary use and not accessory to another use, such as retail sales. The shop may include work space, storage space, and office space, but may not exceed 2,000 square feet of total floor area.*

Mr. Solich found that it says on page 215 what professional services would be in the professional offices. Ms. Kline says we could reference the definition section, but not the page number. Mr. Solich asks whether we could delete professional offices. Mr. Solich says that if professional services are an in home occupation, then we don’t need to put anything. Mr. Mangiafico wants to know if we want to be able to allow them specifically. Mr. Ledgett wants to know who will be using this - a house of prostitution?

- *Ms. Gagner and Ms. Kline say that professional services need to be defined. Mr. Muir and Mr. Ledgett would like professional services removed.*

There is a discussion about what would be considered a service establishment. Do drycleaner, barber shop, tailor, and clock repair fall under that heading? Mr. Solich says clock repair is under mechanical services. Personal services have to do with beauty, laundries, etc. Chairman White would like it removed. Mr. Muir asks about tax preparation. Ms. Kline thinks that falls

under professional offices and Mr. Solich thinks that falls under business services. Mr. Mangiafico suggests dog grooming. Mr. Mangiafico would not want to eliminate, since it is very broad. Mr. Ledgett would like it as a special exception because you want to keep it under control. Mr. Mangiafico suggests looking to another ordinance for the definition. Mr. Mangiafico does not see the point of making it a special exception.

- *Need a definition added for service establishment and some examples given. Perhaps make it a special exception.*
- *Mr. Ledgett wants institute of education defined, but Chairman White does not think it is necessary.*

There is a discussion about providing services to new and used cars. Mr. Mangiafico says that with a new car dealership, service is really a linked use. Mr. Ledgett thinks that we need to figure out how to control the large numbers of used vehicles. Ms. Gagner is looking at accessory buildings and uses, page 213 at the bottom. Is that where the garage would be allowed with new car sales? Mr. Mangiafico thinks so.

There is a discussion about commercial parking lot or garage. Ms. Gagner thinks there should be a reference to a parking garage. Mr. Muir says that parking garages may not have existed back when the ordinance was last changed. Mr. Ledgett says that garage is not defined.

Mr. Ledgett wants neighborhood grocery changed. The definition headings now are convenience store, neighborhood grocery facilities, so we should make it consistent with the definition. Why do they define grocery stores and food stores? Grocery stores are supposed to be bigger. Food store, neighborhood grocery, convenience store, and grocery store. Food store is Route 1, while a grocery store is Hannaford. On Route 1 South, we would allow food stores, but not grocery stores. Convenience store has the size in it.

Is there anything in the adult entertainment definition as to where it can be located? No, it is in the performance standard. It's in the commercial zone and not in mixed use.

- *Mr. Ledgett would like "campground or trailer park" rather than having "campground/trailer park"*
- *Mr. Mangiafico says that b.11. should be treated the same.*

There is a discussion about adding a statement such as: "Uses not allowed as permitted uses or special exceptions are prohibited within this district." The Kennebunk ordinance has something similar. Ms. Kline and Mr. Ledgett want to add a statement. Mr. Mangiafico thinks the Town Attorney interprets it that way anyway.

- *Add "If a use is not permitted or listed as a special exception, it is not allowed in this zone."*

Should this be called a zone or a district? Chairman White says it is a zone called the Mixed Use District. Mr. Mangiafico says the zoning map refers to zoning district boundaries. Chairman White thinks zone is the generic word used throughout. Mr. Ledgett says that we can define zone as including zoning district, etc.

- *The reference to zone or district must be consistent throughout. Right now, both are being used.*

Have finished pages 1 and 2.

- *Standards, # 1, seems unclear. That should be changed in accordance with Chairman White's copy.*

- *Change “parking stall” to “parking space”.*
- *Mr. Mangiafico changes the last sentence in # 3 to read: “All new or revised parking must be visually screened from ...”*

When we reference the design handbook, do we want to put in section numbers, as requested by Town Council? The concern raised by Mr. Ledgett and Mr. Solich is that if we do that, we will have to change both any time we change the design handbook. Chairman White says the design handbook will be a user friendly guide. You should be able to pick it up and find the section you want easily. The test is whether we have enough of the design handbook ready for Town Council to test it and see if they can find the information easily. Ms. Gagner would like the title heading to be comparable so that it is easy to find. Mr. Ledgett reads from the outline currently. It is not easy to find from the quick definitions. Mr. Solich thinks that people will read the design handbook first, then go to the ordinance. Chairman White thinks that the table of contents in the design handbook must be very clearly laid out. Chairman White says it could also be indexed. Mr. Muir says there may be a relatively small number of references to the design handbook in the ordinance. We can guarantee that they will find the right place by titling the headings in the design handbook appropriately. Mr. Solich says currently the table of contents in the design handbook does not help.

- *In the mixed use district provisions on page 3, change “historical” to “historic”*

Page 4, at 5. Landscaping standards. “... and assure development benefits to the town.” Mr. Ledgett does not know what that means. What are we trying to do with those words? Chairman White wants it to say “development that benefits the town.” Mr. Muir wants it to say “that development benefits the town.” Chairman White says that basically, these are the 3 goals. Also, say “appropriate screening of parking areas.” Mr. Ledgett says there is a benefit to the town of attractive site design and screened parking, but he does not see the benefit of using the word “development” under landscaping standards. Mr. Muir gives an example of curb cuts that has a benefit of public safety. There are various impacts. Mr. Mangiafico says you want to make them look attractive, screen the parking, and have a certain amount for the environment, such as buffers. Mr. Ledgett would then say that it is to ensure “environmental benefits”. Mr. Muir would change it to say that. Chairman White and Ms. Kline think it should be kept general. Mr. Solich says to get rid of “that development benefits the town” and put an “and” between the other two. Mr. Mangiafico would like to have something in about the environment as well. Mr. Muir says that this is the reason that developers should be willing to pay extra.

Chairman White also wants to know if we use the term “remodeled” that is there before “development.” Remodeled? New and modified? Chairman White says this is language that is already there in the MU. Ms. Kline wants to know if we are getting in trouble with the Comp Plan. Is it telling us to use this language? Chairman White thinks that we could leave it in. Mr. Mangiafico says redeveloped is different from remodeled. Ms. Gagner likes modified. Mr. Mangiafico likes that.

- *Consensus to change “remodeled” to “modified existing”. Mr. Muir thinks existing is redundant.*
- *Page 5, ii, 5 lines from the bottom, the underlined portion should be deleted: “should be preserved and will count toward the requirements.”*
- *Page 6, paragraph C in the middle of the page, “or the numbers revised as necessary to*

be practical up until the ...". Cross that out and put a period after use.

In the next sentence, it says, " the required trees may be clustered and relocated away from the road." Who gets to make that decision? Mr. Ledgett asks. Ms. Kline says the CEO does. Ms. Kline says it is helping to prevent people from going to the ZBA on this issue.

- *Page 5, delete "roadside" before "trees". It's already talking about streetside.*

Chairman White wants to know what happens with a non-native tree. Ms. Kline says that with a non-native tree, out by the roadside, in mixed use... Chairman White thinks that new trees must be native. However, what about the non-native ones that exist? Ms. Kline says it becomes an issue with a stand of buckthorn in a wetland. Ms. Kline would be happy to do a list of invasive species so that we could deal with that. We want new trees to be native. There is a discussion about whether to say that "existing large, healthy trees shall be preserved and may count toward this requirement" or "...and will count toward this requirement." Mr. Ledgett says that we have above that the new trees shall be selected from the design handbook. Chairman White says that we will list them in there. Mr. Mangiafico thinks people won't look. Ms. Kline would like to say something about within the Right of Way or something about keeping the existing trees somewhere along the roadside. When you get a timber harvesting permit, you can take whatever you want. Mr. Solich thinks it says enough, as does Chairman White. Mr. Mangiafico thinks it might be nice in the design handbook to say that we encourage saving trees. "To encourage maintaining the natural landscape..." Mr. Muir doesn't think that is necessary. Every development, we end up twisting arms to try to get them to save the trees. Sometimes it is cheaper to plant new little trees than to try to change their design. Ms. Kline says that we want to discourage flowering ornamental trees in the mixed use zone. We need to put together a list of which trees are more salt tolerant. Portland reported that they had to remove 50-year-old maples because they died, probably because of salt.

- *Ms. Kline will put together a list of salt-tolerant trees.*
- *Chairman White says to cross out the last sentence, "Such existing trees..."*

On page 6, it says "where buffering is required", which leads to a discussion of where in the code buffering is required.

- *On page 7, Mr. Ledgett wants to remove "retention of" from the sentence: "Rural landscape features such as... must be retained."*

The reference to 1632 shall be left as is, since 1632 refers the reader to the design handbook.

- *In e, take out "for appropriate buffering."*

When we get to Commercial Zone, let's be sure we define where necessary and know what we mean.

- *"Outdoor service areas" must be defined. Is it electrical transformers, air conditioning, loading docks?*

Paragraph 6 on page 7 - Mr. Ledgett says strike "see design handbook for appropriate examples." Mr. Muir differs. Chairman White would like to say, "For examples of appropriate buffering, see design handbook." Mr. Muir sees it as expanding on previous comment. Mr. Eyerman has parenthesis throughout. Do we want to leave it that way? Mr. Solich says that at ii, we need to make a similar change and say "For examples of..."

- *Mr. Muir says that Mr. Eyerman needs to look at the grammar in here. Mr. Muir thinks that we need a period after buffering.*

- *On Page 7, Mr. Ledgett wants to add “including” after “lot,” and delete “included” at the end.*

On page 8, Mr. Ledgett wants to know in the middle, who is the decision making authority? Is it us or the CEO? Chairman White thinks it is the CEO. Ms. Gagner says to go back to the standards. Mr. Ledgett wants to know who else could make the decision. He wants it to say the Planning Board or the CEO. Mr. Ledgett wants to know if it has to be approved at all.

Mr. Mangiafico thinks that the first part where it is all capitalized should be in bold and as a title line. Mr. Muir says Mr. Eyerman has been using this style throughout.

Ms. Kline says the only time she has seen this used so far, they came before the Planning Board. Mr. Ledgett says that the CEO job is exclusively enforcement at state level and that interpreting the ordinance is not part of the CEO’s job description. Chairman White thinks that we, as quasi-judicial body, should be able to interpret the ordinance. Mr. Mangiafico says anyone that is enforcing the ordinance has to interpret the ordinance. Mr. Ledgett says that is different from issuing formal interpretations which, in effect, become changes to the code. It is different for Planner Noel. Chairman White says that even if someone gives incorrect guidance, the ordinance stands. Mr. Ledgett says that we have this permissive statement in here and nothing about who makes the decision. This is MU and old language. We are adding this language in the other zones. Chairman White says there is a strict buffer in MU. If it can’t be strictly applied, then it can be shifted around. Mr. Ledgett thinks the principle is sound, but he wants to know who makes the decision. Chairman White thinks that we should not do this as a rewrite. Ms. Gagner says that our CEO has allowed expansions to happen that never made it to the Board level.

There is a discussion as to how the Board arrived at 40,000 sf on page 9, the first paragraph with a lot of underlining. 40,000 sf is an acre. With a lot of record of over 200,000 sf, why let them cut off a little rather than splitting it in half? Mr. Solich says that we did that for a parent that wanted to do that for a child. Chairman White says the minimum standard is 40,000. However, you cannot split it into more than 2 lots. The minimum lot size in the zone is 80,000 sf. You must have more than 200,000 sf in order to do this at all and it has to have a single family dwelling on it now. The 40,000 sf requirement comes from rural residential.

- *Page 9, consensus to add after district “and no further subdivision shall be allowed.”*

Mr. Muir does not know why the line re: setbacks is stricken. By striking that provision, we are using our own MU distance standards. Ms. Kline says that these will be small lots and won’t meet the requirements for lot coverage. Ms. Kline says that they can have 80% lot coverage with no open space requirement. Mr. Mangiafico does not know if we have a lot coverage requirement in that zone because we have an open space requirement. There is a question as to whether we need to add a dimensional standard. Mr. Ledgett thinks that if we add it, it conflicts with the 40,000 sf. Ms. Kline says no because we do it in rural residential.

- *We suggest that the line re: setbacks not be stricken because we don’t know how else to put it back in balance with the rest of the town.*
- *On page 10, “are satisfied” should be changed to “must be satisfied”.*
- *On pages 10 and 11, change the “will”s as in “will not endanger”, “will not unreasonably reduce the value”, “will prevent”, etc. to “shall” or “must”.*

Mr. Dennett said he wanted us to find out if this is a state law that gas stations need to be 2,000

feet away. Distances from residences was one of the big questions. Mr. Ledgett thinks it would have to be safety. Mr. Mangiafico thinks that b 2,000 is local and c 150 feet is safety issue. Dennett thinks that you should be able to have a garage with the availability of gasoline, storage, and stuff.

- *Planner Noel or Mr. Eyerman need to explain to the Board the reasoning behind the 2,000 foot and 150 foot setbacks.*

If you say that light industry has to stay away from a motel or hotel, but a motel or hotel does not have to stay away, that is not fair.

Mr. Muir moves to adjourn.

Mr. Mangiafico seconds.

All in favor.

Adjourn at 9:30.